IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

L.P.A. NO. 2 OF 2000.

Date of Decision: 12.3.2007

M/s. Friends & Company ……**Appellant/plaintiff**

Versus

State of Himachal Pradesh and another.

…… **Respondents/Defendants.**

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The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting?

For the appellant/plaintiff: Mr. Shrawan Dogra, Advocate.

For the respondents-defendants: Mr.M.S. Chandel, Advocate General with Mr.R.M.Bisht, Dy.Advocate General.

Deepak Gupta, J(oral)

The appellant (here-in-after referred to as the plaintiff) filed a suit against the respondents (here-in-after referred to as defendants) for recovery of Rs.18,05,000/-. In Para No.1 of the plaint the plaintiff made the following averments:-

> "That the plaintiffs is a registered partnership concern registered under the Indian Partnership Act and is working as Forest Lessees at Mandi town in Himachal Pradesh within the jurisdiction of this Hon'ble Court, the facts submitted here-in-below would warrant the conclusion that the plaintiffs have been subjected to injustice and

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Whether reporters of Local Papers may be allowed to see the judgment?

as such, they are filing and maintaining this suit before this Hon'ble Court to get justice"

In the written statement the defendant No.1 replied to Para No.1 as follows:-

"Admitted to the extent that the plaintiffs M/s Friends and company were registered Forest Lessees and purchased Lot No.6/81-83 Upper Ravi (Now Bharmour) Forest Division in the general auction held during February, 1981 and the rest of the averments are denied being wrong. No. injustice has been done to the plaintiff".

The following issues were framed by the learned Single Judge on 30.4.1990:-

1. Whether 5530 scants were lying in the custody, care and possession of the Forest Department at boom heads and were lost for which the Forest Department is responsible to account for? OPP
2. If issue No.1 is proved, whether the plaintiffs are entitled to recovery Rs.18,05,000/- or any other amount from the defendants.
3. Relief.

It would be pertinent to mention that no issues were framed either with regard to the question that the plaintiff is a registered partnership firm or on the question as to whether Sh. P.C. Anand was a partner of the said firm or not?

The plaintiff had made a categorical averment in the plaint that the plaintiff is a partnership firm. In the heading of the plaint, it was stated that the suit was filed through Sh. P.C. Anand one of the partners. There was no denial to either of these averments in the written statement. However, the learned Single Judge held that the plaintiff has not proved that it is a registered partnership firm and

the suit is hit by the bar Under Section 69(2) of the Indian Partnership Act and dismissed the suit without deciding any of the issues framed.

In our considered view when no issues had been framed on these points, the learned Single Judge was not justified in dismissing the suit on this technical ground. Even if the learned Single Judge felt that the suit was hit by the provisions of the Indian Partnership Act he should have first given an opportunity to the plaintiff to show that it is a registered partnership firm and that Sh. P.C. Anand is one of the partners of the said partnership firm. This was not done and the suit was dismissed, without giving any opportunity to the plaintiff.

A party is expected to lead evidence only on the issues framed. If there is no denial of the averments made in the plaint by the defendants, the same are deemed to have been admitted and the party does not then have to prove these averments. Therefore, the learned Single Judge should have atleast given an opportunity to the plaintiff to prove its case after framing issues. In our considered opinion the learned Single Judge gravely erred in deciding this question without hearing the parties.

Alongwith the appeal the plaintiff has also filed an application being CMP No.24 of 2000 under Order 41 Rule 27 CPC and placed on record the Certificate of the Registrar Firms which shows that the plaintiff M/s. Friends and Co. Mandi is registered partnership firm under Section 59 of the Indian Partnership Act

1932 and was so registered on 23.10.1973 much before the filing of the suit. The plaintiff has also filed Form-A (Rules 5) of the Register of Firms which shows that Sh. P.C. Anand firm is a partner of the firm. It would be pertinent to mention that in the present suit the State Govt. even in the reply to the application for leading additional evidence has not denied the correctness of the documents which have been issued by an officer of the State.

As we have already observed above the learned Single Judge should have granted an opportunity to the plaintiff to prove the fact that the plaintiff is a registered partnership firm and that Sh. P.C. Anand is one of the partner of the firm. Now, the plaintiff has alongwith the appeal filed CMP No.24 of 2000 the documents which are documents issued by an officer of the State Government which conclusively prove that the plaintiff is a registered partnership firm and Sh. P.C. Anand a is partner of the said firm. The plaintiff did not lead evidence on this question since no issue was framed. We are of the considered opinion that the plaintiff is well within his rights to produce and prove these documents in appeal. These documents are also necessary for complete and proper adjudication between the parties. In our opinion, the plaintiff was not in any way negligent. Therefore, CMP No.24 of 2000 is allowed and the documents which have not been denied are exhibited as Ext.PX-1(Certificate of registration) and Ext.PX-2 (Register of firm showing the names of the partners).

Keeping in view of the aforesaid discussion, it is clear that the suit of the plaintiff could have not been dismissed under the provisions of the Indian Partnership Act. Accordingly, the appeal is allowed and judgment and decree of the Learned Single Judge dated August 3, 1999 passed in Civil Suit No.14 of 1987 is set aside. Since the learned Single Judge rejected the suit only on the ground that the same is not maintainable, the case is remanded to the learned Single Judge for decision afresh.

The parties to bear their own costs.

(Deepak Gupta)
Judge

(Surinder Singh)
Judge

March 12,2007.
(sks)